

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 426 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARVAD NAJABHAI PETHABHAI

Versus

BHARVAD RANCHHODBHAI JETABHAI & ORS

Appearance:

MR JD AJMERA for Petitioner

SERVED for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 05/09/97

ORAL JUDGEMENT

1. The petitioner before this court is the original plaintiff and the respondents are the defendants and they have not appeared in these proceedings before this court. The petitioner filed Reg.C.S.No.87/93 in the court of Civil Judge (JD) at Halvad, district Surendranagar interalia alleging that he was the owner of land bearing S.No.184/13 at village Khatardi. It was his case that he

has spent fairly good amount and has put up bore wells and that there was standing crop in the suit land. He further alleged that on the Southern side of this land of the defendants is situated and the defendants are headstrong persons and he was therefore apprehending that the defendants might encroach upon his land and therefore he applied for temporary injunction. Initially temporary injunction was granted and the defendants did not appear. Thereafter, in order to show the actual possession of the plaintiff over the suit land he relied upon the measurement sheet prepared by the District Land Record Officer on March 9, 1993 wherein by markings in the map actual possession of the land is shown and partially the plaintiff is shown in possession and partially the defendants are shown in the possession of the land. Said document is produced on record by the plaintiff.

2. However, the Civil Judge (JD) Halvad when he was moved by application-Exh.26, dated 23.3.94 in the aforesaid Regular Civil Suit, he allowed the application-Exh.26 which was filed by the defendants and appointed the District Land Record Officer, Dhangadhra as Commissioner to make on the spot investigation and to submit its report on or before 18.4.94. Said order is passed by the Civil Judge (JD) Halvad on 23/3/94. Now when there is already a report prepared by the District Land Record Officer which is already in existence the question which arises for consideration of the court is as to whether there was any need to pass an order to appoint the very officer as Court Commissioner requiring him to submit report about actual possession of the land in question.

3. Mr.J.D.Ajmera appearing for the petitioner-plaintiff has submitted that when there was already on record the report of the District Land Record Officer in respect of very property, the application given by the respondents-defendants to appoint Court Commissioner for local investigation under Order 26 Rule 9 was not competent and not necessary, firstly because there was already in existence the report of the competent authority showing that in part of the land the plaintiff was in possession while part of the land in question defendants were in possession. Said report was also produced before the court. Trial court has while granting ad-interim injunction taken that fact into consideration. The language employed in Rule 9 Order 26 CPC is clear that it is the discretionary power given to the court when a court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute may issue a commission to such a person

as it deems fit. The Apex Court has also in the case of FILMISTAN PVT.LTD vs M/S BHAGWANDAS SANTPRAKASH reported in AIR 1971 SC 61 taken the view that power of appointing the court commissioner is a discretionary power and once such power is exercised the court having exercised the discretion ordinarily such discretionary order should be interfered with.

4. The case of the plaintiff is that the District land Record Officer has also undertaken the local investigation of the land in question and that the same is produced in another suit being Civil Suit No.1/95. In view of the report of the District Land Record Officer at Dhangadhra which may be produced in this case also, there was no need of directing the very officer to, once again, undertake the local investigation and to prepare the report especially when the allegations are to the effect that the respondents are headstrong persons and are likely to take law in their hands before investigation is undertaken. When the matter is one of the discretion of the court ordinarily this court would not interfere with the order of this nature which is passed under Order 26. Calling upon the same officer to submit the report of the local investigation of the very field would give rise to further internal dispute between the parties and when the objections are to the effect that the respondents-defendants are headstrong persons who can take law in their hands and can change the status quo prevailing on the parcel of the land, in my opinion court should not exercise its jurisdiction and should have called upon the plaintiff to produce earlier report of the District Land Record Officer with respect to the very land in question that would not permit any party to improve the situation and the court shall have to decide the civil suit on the basis of oral and documentary evidence as well as record which was already in existence. But, in fact, when there was already in existence a report prepared by the District land Record Officer at Dhangadhra this court would not interfere with the exercise of discretionary power but when the Civil Judge (JD) at Halvad has appointed the very officer once again to undertake the local investigation in my opinion he has exceeded the jurisdiction. Plaintiff is directed to produce before the trial court on the next date of adjournment the earlier report of the District land Record Officer and based on such report the trial court shall proceed to decide the suit.

5. In the result, the CRA succeeds and the order passed by the Civil Judge (JD) Halvad below Exh.26 dated 23.3.94 is quashed and set aside. Rule is made absolute

to the aforesaid extent. No costs.